TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1902.~~ ~~1903.~~ 1904.

No. ~~703.~~ ~~284.~~ 34.

THE UNITED STATES, APPELLANT,

vs.

F. G. EVANS, CLAIMANT OF THE BRITISH STEAMSHIP "BLACKHEATH."

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ALABAMA.

FILED MAY 14, 1903.

(18931.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 703.

THE UNITED STATES, APPELLANT,

vs.

F. G. EVANS, CLAIMANT OF THE BRITISH STEAMSHIP "BLACKHEATH."

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ALABAMA.

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1 *Caption.*

UNITED STATES OF AMERICA.

District court of the United States for the southern district of Alabama.

THE UNITED STATES OF AMERICA, LIBELANT,
versus
THE BRITISH STEAMSHIP "BLACKHEATH," F. G. Evans, master & claimant.
} Number 1012. In Admiralty.

F. G. Evans, claimant and principal, on the claim bond given for the release of said steamship, and Robert Hunter and George E. Sage, sureties thereon.

Libel in rem for damages for the destruction of a beacon or channel light in the Mobile ship channel caused from a collision by said steamship.

Transcript of the record and proceedings in said cause, in which the question of jurisdiction alone is the issue.

Process.

UNITED STATES OF AMERICA.

District court of the United States for the southern district of Alabama.

The President of the United States of America to the marshal of said district, greeting:

You are hereby commanded that you attach, seize, take, and safely keep the British steamship "Blackheath," her tackle, apparel, and furniture, whereof F. G. Evans is master, now lying at the port of Mobile, so that you have said steamship "Blackheath," her tackle, apparel, and furniture, subject to the order and decree of the district court of the United States for the southern district of Alabama, at Mobile, on the first Monday of March, A. D. 1903, to answer the libel of the United States of America in the sum of $1,100.00 for damages to beacon buoy Number 7 in the Mobile ship channel by reason of a collision
2 therewith on the 24th day of January, A. D. 1903. Herein fail not, and have you then and there this writ.

Witness the honorable Harry T. Toulmin, judge of the district court of the United States for the southern district of Alabama, and seal of said court, this the 29th day of January, A. D. 1903.

Attest: RICHARD JONES, *Clerk.*

(Seal U. S. Dist. Court, Sou. Dist. Alabama.)

Service of this writ of seizure is hereby accepted and seizure of vessel waived, this 30th day of January, A. D. 1903. F. G. Evans, master of steamship "Blackheath."

Filed January 30th, A. D. 1903.

RICHARD JONES, *Clerk.*

Claim bond.

UNITED STATES OF AMERICA.

District court of the United States for the southern district of Alabama.

Know all men by these presents, that we, F. G. Evans, claimant of the steamship "Blackheath," principal, and Robert Hunter and George E. Sage, sureties, are held and firmly bound unto the United States of America in the sum of two thousand two hundred dollars ($2,200.00), lawful money of the United States of America, to be paid to the said United States of America, to which payment well and truly to be made we bind ourselves and each of us, jointly and severally, one and each of our executors, administrators, or heirs, firmly by these presents. Sealed with our seals and dated this the 30th day of January, A. D. 1903.

Whereas a libel has been filed in the district court of the United States for the southern district of Alabama, on the 29th day of January, A. D. 1903, by the said United States of America against the British steamship "Blackheath" for damages by collision of said steamship with beacon bouy Nnmber 7, in the Mobile ship channel, civil and maritime, for eleven hundred dollars, therein alleged to be due and owing to the said libelants.

The condition of this obligation is such that if the above bounden F. G. Evans, claimant, principal, and Robert Hunter and George E. Sage, sureties, shall abide and answer the decree of the court, or upon appeal of the appellate court, then this obligation to be void; otherwise to remain in full force and virtue.

F. G. EVANS. [SEAL.]
ROBERT HUNTER. [SEAL.]
GEORGE E. SAGE. [SEAL.]

3 Acknowledged, signed, sealed, and delivered in the presence of and before me, this the 30th day of January, A. D. 1903.

RICHARD JONES, Jr., *Deputy Clerk.*

Approved January 30th, A. D. 1903.

HARRY T. TOULMIN, *Judge.*

Filed January 30th, A. D. 1903.

RICHARD JONES, *Clerk.*

Claim.

UNITED STATES OF AMERICA.

District court of the United States for the southern district of Alabama.

THE UNITED STATES OF AMERICA
versus
STEAMSHIP "BLACKHEATH." } No. 1012. In Admiralty.

Comes F. G. Evans, master of said steamship "Blackheath," and for the Britain Steamship Company, Limited, of London, England, owners thereof, intervenes in said cause and claims the possession of said steam-

ship, and says that the said Britain Steamship Company, Limited, in whose behalf this claim is made, are the true and bona fide owners of said steamship and that no other persons are the owners thereof. And claimant further says that he is duly authorized to make this claim for and in behalf of said owners.

F. G. EVANS.

Subscribed and sworn to before me this 30th day of January, A. D. 1903.

RICHARD JONES, Jr.,
Deputy Clerk U. S. Dist. Court.

Filed this January 30th, A. D. 1903.

RICH'D JONES, *Clerk.*

Libel.

To the honorable HARRY T. TOULMIN, *judge of the district court of the United States for the southern district of Alabama:*

The libel of the United States of America against the British steamship "Blackheath," F. G. Evans, master, her tackle, apparel, and furniture, and all persons lawfully intervening for their interest in the same in a cause of collision civil and maritime, alleges as follows:

1st. That your libelants, before and at the time of the collision herein mentioned, were the owners and proprietors of a certain beacon number 7, Mobile ship-channel lights, Alabama, which said beacon constituted a part of the system of channel lights from the port of Mobile to the lower bay or anchorage near Fort Morgan, Alabama.

2nd. That on Saturday the 24th day of January, A. D. 1903,
4 the said British steamship "Blackheath" was approaching the port of Mobile from the sea, having on board one George Godbold as pilot. That said beacon number 7, Mobile ship-channel lights, was then safely and securely constructed upon piles driven from 10 to 12 feet in the bottom of the bay on the south side of the channel, about 30 feet distant from said south side of the channel and not more than two miles south of the port of Mobile.

3. That said steamship "Blackheath" was steaming up the said channel to the port of Mobile about 9 o'clock a. m. of said January 24th. The weather was fair. Said beacon number 7 and the channel were in full view of the master, pilot, and other officers of said steamship.

4th. That said beacon number 7, Mobile ship channel lights, the piling upon which it was constructed, and the lens lantern suspended therefrom, were completely demolished by the force and violence by which they were struck by the said steamship "Blackheath." In consequence of said collision of the said steamship "Blackheath" with said beacon number 7, libelants will be compelled to restore the same entirely, and libelants have sustained in consequence of said collision a loss to the amount of eleven hundred dollars ($1,100.00), which said loss and damage were occasioned by the negligence, want of skill, and improper conduct of the persons navigating the said steamship "Blackheath," and not by or through any fault, negligence, or improper conduct of these libelants.

5th. That since the said beacon number 7 was destroyed by said

steamship as aforesaid, libelants, through the office of Lieutenant-Colonel A. N. Damrell, United States Engineers, and engineer of the 7th and 8th light-house districts, have applied to the firm of Hunter, Benn & Company, of Mobile, Alabama, the consignees of said steamship "Blackheath," and requested them to settle or give security to these libelants for the damages sustained by them as above mentioned. Libelants are informed and believe that the owners of the said steamship "Blackheath" reside abroad, but the said consignees do not admit any liability on the part of said steamship for the damages or any part thereof.

6th. That said steamship "Blackheath" is now lying in the port of Mobile and within the jurisdiction of this court.

7th. That all and singular the premises are true and within the admiralty and maritime jurisdiction of this honorable court.

Wherefore libelants pray that process in due form of law, according to the course of this honorable court in cases of admiralty and maritime jurisdiction, may issue against the said steamship "Blackheath," her tackle, apparel, and furniture, and that all persons having any interest therein may be cited to appear and answer on oath all and singular the matters aforesaid, and that this honorable court may be pleased to decree the payment of the damages as aforesaid, and that said vessel may be condemned and sold to pay the same, and that libelants may have such other and further relief as in law and justice they may be entitled to receive.

M. D. WICKERSHAM,
U. S. Attorney for the Southern District of Alabama,
Proctor for Libelants.

(Endorsed:) No. 1012. U. S. district court sou. dist. Alabama. The United States versus British Steamship "Blackheath." Libel for damages $1,100.00 by collision to Beacon No. 7. Filed this January 29th, A. D. 1903. Richard Jones, clerk.

Answer by claimant.

District court of the United States for the southern district of Alabama.

THE UNITED STATES OF AMERICA
versus
BRITISH STEAMSHIP "BLACKHEATH." } No. 1012. In Admiralty.

The answer of F. G. Evans, master and claimant of steamship "Blackheath," in behalf of the owners thereof to the libel of the United States against said vessel.

And for such answer said master doth allege as follows:

First. That he admits the allegations of the first paragraph of the libel.

Second. That on Friday, the 23rd day of January, 1903, said steamer approached the outer bar of Mobile Bay, being bound for the city of Mobile, under consignment to Hunter, Benn & Company.

At about 4.30 p. m. o'clock she took on board a pilot, one George Godbold, near the whistling buoy outside the outer bar; said pilot was

so taken from a pilot boat which there approached and tendered him to said ship as a pilot to navigate it to the city of Mobile.

Said Godbold was then a duly licensed and commissioned pilot for the navigation of vesels over said outer bar and up to the ship channel from Fort Morgan to Mobile. He took full control of the navigation of the ship immediately upon boarding her, and retained such control until the occurrence of the collision complained of. He at once took the ship over the outer bar and carried her up the channel to near the
6 lowest beacon light two or three miles north of Fort Morgan, where she arrived about 5.30 Friday afternoon.

He caused her to be anchored there, declaring it to be unsafe to attempt to proceed up the channel that night.

Third. On Saturday morning, the 24th of January, said pilot caused said vessel to be gotten underway and proceeded to take her up the ship channel of Mobile Bay on her way to the city of Mobile.

Said channel was constructed and is sustained by libelant, and is open to ships such as the "Blackheath," and its use by them invited by libelant. It is a very narrow channel, giving very little room for navigation or for maneuvering a vessel in case of any sudden emergency.

The vessel was in ballast, drawing about nine feet forward and about twelve feet aft, and proceeded up the channel under her own steam and at about half speed; she was entirely under control and obedient to her helm until just at the time of the collision.

Fourth. At a distance of a half a mile or more beacon 7 and a large Italian brig lying just above it were plainly visible to those on the "Blackheath." The brig was about 300 feet above the beacon, and was then stationary and was in fact aground in the channel near its western side. There was no reason to believe that there would be any difficulty in the "Blackheath's" passing the brig, and it was not imprudent to attempt to do so; she was therefore kept on her way. The channel at that point gradually curves to the northeast, and there was then a strong ebb tide running. Just after the bow of the ship had gotten above the beacon a strong current struck it on the starboard side and caused it to sheer towards the south bank of the channel. This current was partly made and directed by an eddy that had been created by the brig's situation, which tended to run the tide strongly over to the southward and westward. It was unusual and was unknown to and unexpected by the pilot or by the master or anyone else in charge of the vessel. The vessel being in imminent danger of grounding, immediately upon her beginning to sheer the pilot ordered the wheel hard a-port and the engines full speed ahead, which orders were promptly obeyed. The current was running so strongly against the starboard bow that the ship could not obey the helm instantly and continued to sheer towards the south, getting between the beacon and the brig. In another moment she must have yielded to the helm, but by that time she had gotten into such a position that upon doing so she would inevitably have cut through the brig. The emergency was very critical, and the pilot thereupon ordered full speed astern and the anchor let go, both of which orders were executed as soon as given. Upon that being done the ship swung towards the beacon and crashed into it before
7 anything could be done to check her.

Fifth. This respondent had no knowledge of the channel, its current or conditions, and put his vessel entirely under the control of the

pilot, who navigated it without interference on his part all the way up the channel and until the accident occurred, though respondent stood by him and looked out for some time before the danger commenced, and until after the beacon was struck.

In his judgment the orders given by the pilot after the ship began to sheer southward were prudent and the best course to be pursued under the circumstances.

If steam had not been put on and the helm had not been put hard aport, the current would have swept the ship down on the beacon. If that had been continued, the brig would have been run down. After the current struck the starboard bow and caused the southward sheer of the vessel, it was not possible to avoid injury either to the brig or else to the beacon, and to have cut down the brig would have been much the greater calamity.

Respondent has been informed by said pilot and believes and therefore states, that it was not imprudent for the "Blackheath" to attempt to pass the brig as she did, and that she got into her dangerous situation without fault on her part.

He submits to the court that the injury to the beacon was the result of unfor'seen conditions and not to be expected, and was an inevitable accident without fault on the part of the ship.

Sixth. Respondent does not know and can not answer as to the extent or pecuniary amount of damage to the beacon by the collision. So far as he could see, it was driven under water, and there was nothing he could do in the way of saving any part of it or of reducing the pecuniary damage sustained.

Seventh. Respondent admits that Hunter, Benn & Company, of Mobile, were the consignees of the ship, and that demand was made upon them to settle or give security for the payment of the damages done the beacon as stated in the fifth paragraph of the libel. He says that said consignees, in response to said demand, offered to give security for the payment of any damages which might be adjudged libelant by any court taking jurisdiction of the enforcement of its claim.

And respondent says that all and singular the premises are true. Wherefore he prays that this honorable court will pronounce against libelants with costs.

F. G. EVANS, *Master, etc.*

R. H. CLARKE, *Proctor.*

8 Subscribed and sworn to before me by said F. G. Evans this 31st day of January, A. D. 1903.

RICHARD JONES, JR.,
Deputy Clerk, U. S. District Court, Sou. Dist. Alabama.

Filed this 31st day of January, A. D. 1903.

RICHARD JONES, *Clerk.*

Opinion.

APRIL 3RD, 1903.

THE UNITED STATES OF AMERICA vs. BRITISH STEAMSHIP "BLACKHEATH." } No. 1012. In Admiralty. Libel in rem.

M. D. Wickersham, esqr., U. S. attorney.
R. H. Clarke, esqr., for claimant.
TOULMIN, Judge.

This is a libel in rem to recover damages for the destruction of a structure and beacon or channel light constructed thereon in the river or bay of Mobile caused from a collision by said steamship.

A witness for the libelants was introduced who testified as to the character and construction of the structure on which the beacon light was placed, and where it was situated in the waters of the river or bay of Mobile. Whereupon the claimant moved the court to dismiss the libel on the ground that the court had no jurisdiction of the subject matter of the suit.

In matters of tort the jurisdiction in admiralty depends upon the locality of the thing injured. The locus of the damage and not the locus of the origin of the tort is the real test of admiralty jurisdiction. Hermann vs. Port Blakely Mill Co., 69 Fed., 646; The Mary Garrett, 63 Fed., 1009, and authorities therein cited.

In the case of the Professor Morse, 23 Fed., 803, it was held that an injury to a marine railway was not a maritime tort, although it extended out into the river for a long distance under the water, with one end resting on or near the bottom of the river, because the marine railway was not a floating structure.

In the case of The City of Milwaukee vs. The Curtis et al., 37 Fed., 705, the court, speaking in reference to a swing-bridge resting on a pier constructed on the bed of the river, and which was damaged by the negligent conduct of vessels navigating the river, said, "The cause of the injury was a movable thing navigating the waters; but the consum'ation of the wrong was upon an immovable structure above the waters, attached to the land and not afloat. The absence of admiralty jurisdiction over injuries to such structures is sustained by an overwhelming weight of authority," and in the case of The Mary Webster, No. 9302, Fed. cases,

Judge Blatchford held, that a derrick resting on the soil of the
9 bottom of a river, and in the midst of the water, which was injured by a vessel colliding with it, was not a case of admiralty jurisdiction.

There are many other decisions to the same effect. The law is well settled that no action can be maintained in admiralty for injuries done to a permanent structure resting upon land in a navigable stream, though the structure is lawfully there. Spencer on Marine Collisions, section 11.

The question in this case is, Where was the injury sustained—on land or on water?

The proof is that the structure injured in this case was a permanent one. It was not floating or susceptible of being floated. It was located 15 or 20 feet distant from the channel of the river or bay about two miles south of the city of Mobile in the midst of water 12 or 15 feet deep. It

was constructed of piles driven into the soil at the bottom of the water to a depth of 12 or 13 feet, which piles were braced with iron bars above the top of the water. The piles extended some distance above the water, on the top of which a platform of two by twelve inch planks was fastened. On this platform an iron framework was erected to the heighth of 15 or 20 feet, to which a beacon light was suspended. The structure was an immovable one—that is, not a floating structure or one susceptible of being floated. It was not on the water, but was below the surface of the water, resting well down in the soil at the bottom of the river and extending far above the top of the water.

I think that in legal contemplation it was land.

It seems to me clear, under the decisions, that the injury sued for is not a subject of admiralty jurisdiction.

Being then of the opinion that this suit is not within the jurisdiction of a court of admiralty, the libel must be dismissed. It is so ordered.

Filed this April 3rd, A. D. 1903.

RICHARD JONES, *Clerk.*

Decree dismissing cause and certificate that question of jurisdiction alone was the issue in cause.

THE UNITED STATES OF AMERICA
versus
BRITISH STEAMSHIP "BLACKHEATH." } No. 1012. In Admiralty.

This cause coming on to be heard on the pleadings and evidence as to the construction and character of the structure, the injury to which is sued for, whereupon the claimant moved the court to dismiss the suit on the ground that the court has no jurisdiction of the subject matter thereof, and being submitted thereon and duly considered by the court, the court is of opinion that the injury sued for is not a subject of admiralty jurisdiction and that the suit is not within the jurisdiction of a court of admiralty, it is therefore ordered, adjudged, and decreed by the court that said motion to dismiss be, and the same is hereby, granted, and the cause is dismissed.

And the court doth now hereby certify that the question of jurisdiction alone was the issue in the cause on the evidence submitted.

Made this April 3rd, A. D. 1903.

HARRY T. TOULMIN, *Judge.*

Filed April 3rd, A. D. 1903, and entered on the minutes of the court, page 706.

RICH'D JONES, *Clerk.*

Assignment of errors.

THE UNITED STATES OF AMERICA
versus
BRITISH STEAMSHIP "BLACKHEATH." } No. 1012. In admiralty.

Libelants in this action, in connection with their petition for appeal, make the following assignment of errors which they aver occurred in dis-

posing of the motion made by claimant to dismiss their libel for want of jurisdiction, to wit:

The court erred in sustaining the motion of the claimant to dismiss the libel on the ground that the court had not jurisdiction of the cause, because the effect of granting said motion in that behalf was to deny the jurisdiction of the court.

The court erred in dismissing the libel.

M. D. WICKERSHAM,
U. S. Attorney, Southern District of Alabama,
Proctor for Libelants.

Filed in open court April 3rd, A. D. 1903.

RICHARD JONES, *Clerk.*

Petition for appeal.

THE UNITED STATES OF AMERICA
versus
BRITISH STEAMSHIP "BLACKHEATH." } No. 1012. In admiralty.

Now come the United States of America, libelants herein, and say that on the 3rd day of April, 1903, this court entered judgment herein in favor of the claimant against these libelants, in which judgment or decree certain errors were committed to the prejudice of these libelants, all
11 of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore these libelants pray that an appeal may be allowed in this behalf to the United States Supreme Court for the correction of errors so complained of, and that a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be sent to the said United States Supreme Court.

M. D. WICKERSHAM,
U. S. Attorney for Southern District of Alabama,
Proctor for Libelants.

Filed in open court this April 3rd, A. D. 1903.

RICHARD JONES, *Clerk.*

Order allowing appeal.

FRIDAY MORNING, *April the 3rd, A. D. 1903.*

Present the honorable Harry T. Toulmin, judge presiding. November term, A. D. 1903. Minutes, page 706.

THE UNITED STATES OF AMERICA
versus
BRITISH STEAMSHIP "BLACKHEATH." } No. 1012. In admiralty.

The libelant having filed assignment of errors and a petition praying an appeal to the Supreme Court of the United States from the decree rendered herein on this day dismissing the cause, it is ordered by the court that said appeal be and is hereby allowed as prayed.

Citation.

UNITED STATES OF AMERICA, ss.

The President of the United States of America to F. G. Evans, claimant of the British steamship "Blackheath," greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States at the city of Washington, D. C., within thirty (30) days from the date hereof, pursuant to an appeal allowed by the district court of the United States for the southern district of Alabama, in admiralty cause number 1012, wherein the United States of America is appellant and you, the said F. G. Evans, claimant of the steamship "Blackheath" are appellee, to show cause, if any there be, why the decree mentioned in said appeal should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, honorable Harry T. Toulmin, judge of the district court of the United States for the southern district of Alabama, this the
12 29th day of April, A. D. 1903.

HARRY T. TOULMIN, *Judge.*

Attest:
[Seal U. S. district court sou. dist. Alabama.]

RICHARD JONES,
Clerk U. S. District Court for the Southern District of Alabama.

I hereby accept service of this citation and acknowledge receipt of a copy thereof this April 29th, A. D. 1903.

R. H. CLARKE,
Proctor for F. G. Evans, Claimant and Appellee.

(Endorsed:) No. 1012, U. S. district court southern district of Alabama. The United States of America against the steamship "Blackheath." Filed this April 29th, A. D. 1903. Richard Jones, clerk.

Certificate.

UNITED STATES OF AMERICA.

District court of the United States for the southern district of Alabama.

I, Richard Jones, clerk of said court, do hereby certify that the above and the foregoing eleven pages contain a full, true, and correct transcript of the record and proceedings had in said court in Admiralty Cause Number 1012, The United States of America against the British steamship "Blackheath," F. G. Evans, claimant thereof, as fully as same remain of record and file in my office as such clerk.

Witness my hand and the seal of said court at the city of Mobile, Alabama, this the 4th day of May, A. D. 1903.

[SEAL.] RICH'D JONES,
Clerk U. S. District Court for the Southern District of Alabama.

(Indorsement on cover:) File No. 18931. S. Alabama, D. C., U. S. Term No. 703. The United States, appellant, *vs.* F. G. Evans, claimant of the British steamship "Blackheath." Filed May 14, 1903.

O